

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

TODD E. BECKER                               §  
VS.   §      CIVIL ACTION NO. 4:05cv251  
BUREAU OF PRISONS                       §

MEMORANDUM OPINION REGARDING TRANSFER

Petitioner Todd E. Becker, an inmate confined at the Hamilton Correctional Institution in Jasper, Florida, proceeding *pro se*, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

## Discussion

Petitioner submitted this petition for writ of habeas corpus challenging the calculation of his sentence. Petitioner requests that the Bureau of Prisons recalculate his jail time credits to include 148 days spendt in state custody that was not credited toward his federal sentence.

## Analysis

"To entertain a § 2241 habeas petition, the district court must, upon the filing of the petition, have jurisdiction over the prisoner or his custodian." *United States v. Gabor*, 905 F.2d 76, 78 (5th Cir. 1990) (citation omitted). A § 2241 petition must be filed in the district where the petitioner is incarcerated. *Id.*

Petitioner is confined in the Hamilton Correctional Institution in Jasper, Florida. Jasper is located in Hamilton County, Florida. Pursuant to 28 U.S.C. § 89, Hamilton County is

located in the Middle District of Florida. As petitioner is not incarcerated in the Eastern District of Texas, this court is without jurisdiction to consider petitioner's petition for writ of habeas corpus; subject-matter jurisdiction cannot be waived. See *DeCell & Associates v. F.D.I.C.*, 36 F.3d 464, 471 (5th Cir. 1991).

Under 28 U.S.C. § 1404(a), for the convenience of parties and witnesses and in the interest of justice, a district court may transfer any civil action to any other district or division where it could have been brought. Such a transfer may be done *sua sponte* and is reviewable only for an abuse of discretion. *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 761 (5th Cir. 1989).

After considering the circumstances, the court has determined that the interests of justice would best be served if this petition were transferred to the district in which the petitioner is confined rather than dismissed the case for lack of jurisdiction. An Order of Transfer so providing shall be entered in accordance with this Memorandum Order.

**SIGNED this 1st day of July, 2005.**

  
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DON D. BUSH  
UNITED STATES MAGISTRATE JUDGE